IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : Crl. Appeal No. 521-DBA of 1997
Date of Decision : May 12, 2008.

State of Haryana .... Appellant

Vs.

Bijender and others .... Respondents

CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

HON'BLE MR. JUSTICE L. N. MITTAL

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Present : Mr. P.S.Sullar, DAG, Haryana
for the appellant.

Mr. Kapil Aggarwal, Advocate
for respondents.

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L.N.MITTAL, J. :

This is appeal by State of Haryana impugning judgment dated 13.12.1996 of learned Additional Sessions Judge, Sonepat, thereby acquitting respondents Bijender, his brother Ravinder and their parents Mankauri and Siri Kishan of the charge under Section 304-B of the Indian Penal Code in FIR No.356 dated 16.07.1995, registered at Police Station City Sonepat, giving them benefit of doubt.

The prosecution case is that Rattan Chand – complainant married his two daughters Sunita and Babita with Bijender and Ravinder –

respondents no.1 and 2 respectively, about four years before the lodging of the FIR. All the four respondents had always been making demand of more dowry and money from Sunita and Babita and had been harassing them for the same. The complainant had been meeting the demands according to his capacity, but the respondents, out of greed, killed Sunita by administering her poisonous tablets, on account of non-fulfillment of their dowry demands. On 16.07.1995, the complainant, on receiving telephonic information, reached General Hospital, Sonepat along with his family members. The complainant made statement Ex.P-H to the police and thereupon FIR Ex.P-H/2 was registered. SI Jabar Singh had earlier reached the hospital on receiving message that Sunita had been brought there. By the time Jabar Singh reached the hospital, Sunita had already died. Then Jabar Singh sent for the parents of Sunita and accordingly, Rattan Chand – father of Sunita came and made statement Ex.P-H. Jabar Singh, SI conducted inquest proceedings on the dead body of Sunita and prepared inquest report Ex.P-B. On post mortem examination, cause of death could not be ascertained. Viscera and blood from heart were sent to Chemical Examiner. According to report of Chemical Examiner (Ex.P-C), Aluminium Phosphide (Celphos) was detected in the viscera (stomach, small intestine, liver, spleen and kidney). Phosphide was detected in blood. Letter dated 20.09.1994 (Ex.P-D), letter dated 16.10.1993 (Ex.P-E) and letter dated 15.10.1993 (Ex.P-F), written by Babita were seized by the police on 28.07.1995 vide Memo Ex.P-G. Letters Ex.P-D and Ex.P-F were written to complainant Rattan Chand, whereas letter Ex.P-E was written to Sudesh and Sunil Didi. On completion of investigation, all the four respondents were sent for trial as above.

Charge under Section 304-B of the Indian Penal Code was framed against the respondents. They pleaded not guilty and claimed trial.

Dr.O.P.Hooda (PW-1) stated that he conducted post mortem examination on the dead body of Sunita. In view of Chemical Examiner's report (Ex.P-C), Dr. Hooda stated that cause of death was on account of consumption of Aluminium Phosphide. Rattan Chand (PW-2) and Babita (PW-3) have broadly stated according to the prosecution version. Constable Mool Chand (PW-4), Constable Ram Kumar (PW-5) and Constable Siri Bhagwan (PW-7), being formal witnesses, tendered their respective affidavits in evidence. SI Jabar Singh (PW-6) stated about the investigation of the case conducted by him.

The respondents in their statements under Section 313 of the Code of Criminal Procedure admitted that Sunita was married with Bijender-respondent, whereas Babita was married with Ravinder-respondent on 18.11.1991 and also admitted that Sunita ended her life on 16.07.1995 by consuming poison. However, the respondents denied the other incriminating allegations against them and claimed to be innocent. Respondent Bijender pleaded that he and his wife Sunita (since deceased) were residing in Alipur with complainant-Rattan Chand, who sent them to Sonepat (where other respondents resided) on 15.07.1995 for demanding share in the property of his parents, but his father Siri Kishan-respondent refused to give share in the property as said respondent had first to marry his unmarried children. On account of this dispute and depression, Sunita committed suicide. She was never subjected to any harassment by the respondents. Similar stand was taken by other respondents.

The respondents led evidence in their defence. Dr.P.K.Verma (DW-1) stated that Sunita had obtained treatment from his clinic at Alipur on 13.06.1994 vide prescription slip Ex.D-B. Rakesh Kumar, Clerk from State Bank of India, Narela (DW-2) stated that Bijender and Sunita had opened a joint account in their bank on 11.11.1993 giving their postal

address of Alipur (Delhi) and the account had not yet been closed. Jai Kishan Dahiya (DW-3), Clerk from Regional Passport Office, Delhi stated that Bijender-respondent obtained Passport on 31.01.1994 giving his address as House No. 686, Alipur. On police inquiry, before issuing passport, it was found that Bijender was residing at the said address since 01.09.1993 and prior to it, he was residing at Secunderabad. Charan Singh (DW-4) stated that Bijender-respondent, after discharge from military, was residing with his wife Sunita at Alipur till her death.

The learned Additional Sessions Judge, vide his impugned judgment dated 13.12.1996, found that the prosecution was not able to prove its case beyond reasonable doubt and accordingly, acquitted all the respondents extending them benefit of doubt. Feeling dissatisfied, the State has preferred this appeal.

Learned counsel for the appellant-State vehemently contended that statements of Rattan Chand (PW-2) (father of the deceased) and Babita (PW-3) (sister of the deceased, married with brother of husband of the deceased) have fully supported the prosecution case and their statements, coupled with letters Ex.P-D, Ex.P-E and Ex.P-F written by Babita (PW-3), are sufficient to prove the guilt of the respondents. On the other hand, learned counsel for the respondents contended that respondents are residents of Sonepat, whereas complainant Rattan Chand is resident of Alipur (Delhi) and after Bijender-respondent no.1 (husband of the deceased) retired from military in Secunderabad, he started residing with Sunita in Alipur at the instance of Rattan Chand-complainant, separately from respondents no.2 to 4, who were residing at Sonepat.

We have carefully considered the aforesaid contentions. There is defence evidence showing that respondent no.1 was residing at Alipur along with Sunita. Both of them had opened a joint bank account in Narela

near Alipur on 11.11.1993 giving address of Alipur and the said account had not yet been closed. Bijender-respondent no.1 had also obtained passport giving his address of Alipur and on verification by police, it was found that Bijender was residing at the said address since 01.09.1993 and prior to it, he was residing at Secunderabad. From this evidence, it may be inferred that respondent no.1 was residing with Sunita at Alipur because the standard of proof required from the accused is not of the same degree as required from the prosecution. In view of the aforesaid defence evidence, probablising the defence plea that Bijender-respondent no.1 was residing with Sunita (since deceased) at Alipur, benefit of doubt may be extended to respondents no.2 to 4, but there is no escape from the conclusion that guilt of respondent no.1-Bijender (husband of the deceased) is proved beyond reasonable doubt. In this regard, we have statements of Rattan Chand (PW-2) and Babita (PW-3). Their statements are further corroborated by letters Ex.P-D, Ex.P-E and Ex.P-F, written by Babita. In these letters, she has mentioned about demand of dowry and harassment for the same regarding both the sisters i.e. Babita and Sunita (deceased). It was also mentioned that there was serious danger to the life of Babita. Respondent no.1-Bijender had also been visiting Sonepat as is also manifest from the fact that the occurrence dated 16.07.1995 also took place at Sonepat. Babita (PW-3) was married with Ravinder (respondent no.2), whereas Sunita was married with Bijender (respondent no.1), both on 18.11.1991. Bijender and Ravinder are brothers. In these circumstances, the statement of Babita (PW-3) assumes great significance.

Learned counsel for the respondents contended that there are no details of dates and months of alleged demands, nor any specific demand has been mentioned. This argument is not sufficient to acquit the husband of the deceased. It is admitted case that Sunita died within less than four

years of her marriage. Her death was on account of consumption of poison. Reference to demand of dowry from both the sisters has been specifically made in letter Ex.P-D dated 20.09.1994. There is also reference to demand of dowry in letter dated 15.10.1993 (Ex.P-F). It is also mentioned in this letter that some demands of dowry were even met by the complainant, but still further demands were being made. The letters written by Babita reveal very pathetic condition of Babita, as well as, of Sunita (since deceased).

We are, therefore, fully convinced by taking an overall view of the evidence on record that guilt of Bijender-respondent no.1 is fully proved beyond reasonable doubt. Sunita was being harassed for and in connection with demand of dowry, leading her to commit suicide by consuming poison. All ingredients of offence under Section 304-B of the Indian Penal Code are fully established as against respondent no.1 – husband of the deceased. The presumption under Section 113-B of the Evidence Act also arises against respondent no.1.

The learned trial court observed that Rattan Chand and Babita have not specified the dates, months and year of the demand of dowry. However, when there were continuous demands of dowry, the witnesses were not required to specify the dates, months and year of the demands. On the other hand, letters Ex.P-D, Ex.P-E and Ex.P-F corroborate the statements of these two witnesses regarding dowry demands. It is the stand of the complainant that respondents had **always** been making the dowry demands. In view thereof, it was not necessary to specify the dates, months and year of the demands.

Learned trial court has also discarded letters Ex.P-D, Ex.P-E and Ex.P-F. It was observed by the trial court that in letter Ex.P-D, there is no allegation that Sunita was being subjected to harassment by the accused persons in connection with demand of dowry. This observation is factually

incorrect because it has been specifically mentioned in this letter that both the sisters were being taunted for dowry by their father-in-law Siri Kishan, who was also attributed many other uncharitable and uncalled for remarks about the parents of the deceased. It was also mentioned in the letter that Babita was fed up and needed immediate help and she had even once attempted suicide by consuming poison. In letter Ex.P-F also, there is mention regarding demand of dowry and fulfillment thereof by the complainant. So, these letters written by Babita clearly present very miserable condition of both the sisters in matrimonial home on account of dowry demand and harassment for the same, besides the evil eye of their father-in-law on them.

Learned trial court also acquitted the respondents on the ground that Bijender was residing with Sunita in Alipur i.e. parental village of the deceased. However, for this reason, Bijender cannot be given benefit of doubt as he is primarily responsible for the death of his wife. For this reason, however, benefit of doubt may be extended to respondents no.2 to 4. There is no evidence in support of defence plea that on 15.07.1995, Bijender and Sunita had been sent by the complainant to demand share in the property from the father of Bijender and on altercation for the same, Sunita committed suicide out of depression. So, the said defence plea cannot be accepted.

In view of what has been discussed herein above, we conclude that the reasons recorded by the learned trial court for acquittal of respondent no.1-Bijender are erroneous and unsustainable and acquittal of respondent no.1, recorded by the trial court, has to be reversed. While doing so, we are not oblivious of our limitations in appeal against acquittal. However, keeping in view said limitations, we would not like to disturb the acquittal of respondents no.2 to 4 because qua them, both views are possible

and therefore, the view taken by the trial court qua respondents no.2 to 4 cannot be reversed merely on the ground that another view is also possible.

Accordingly, while affirming the acquittal of respondents no.2 to 4, acquittal of respondent no.1 is set aside and respondent no.1-Bijender is hereby convicted under Section 304-B of the Indian Penal Code. After hearing the parties on quantum of sentence, we sentence Bijender-respondent no.1 to undergo rigorous imprisonment for seven years, which is the minimum punishment for the offence. We also direct respondent no.1 to pay Rs.1,00,000/- as compensation and in default, to undergo further rigorous imprisonment for one year. The compensation shall be payable to Rattan Chand – father of the deceased. The appeal stands disposed of accordingly. Respondent no.1 shall be taken into custody to undergo the said sentence.

(L.N.MITTAL)
JUDGE

May 12, 2008 **(ADARSH KUMAR GOEL)**
monika **JUDGE**